HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.3630 OF 2007

Between:

Mrs. Allam Sujatha

... Petitioner

And

Indian Overseas Bank,
Rep. By its Authorised Officer,
Vijayawada.

... Respondent

:: O R D E R ::

Counsel for the petitioner : Shri Sai Gangadhar Chamarty

February 26, 2007

Per G.S. Singhvi, CJ

This petition is directed against order dated 05.07.2006 passed by Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') in S.A.No.126 of 2004.

We have heard Shri Sai Gangadhar Chamarthy, learned counsel for the petitioner and perused the record. The order impugned in the writ petition reads as under:

> " Applicant called absent. No representation. This Securitization Application is filed without paying advalorem application fee but with deficit fees and the same is liable to be dismissed since advalorem fee has to be paid according to the Notification issued by the Central Government and therefore the Appeal is dismissed and the respondent is directed to recover the fee at the time of sale of the properties if the sale is conducted under the Act and proceeds exceeds the loan

amount the deficit fees amount be credited to the Tribunal's Account. Alternatively the Office is directed to initiate the proceedings under Revenue Recovery Act to recover the deficit application fee from the applicant. Stay granted in I.A.No.738/2004 is hereby vacated. Issue notice to Applicant through his advocate for recovery of the deficit fee."

Admittedly, the above reproduced order is appealable under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Learned counsel for the petitioner fairly conceded that the remedy of appeal is available to his client, but argued that this Court may entertain the writ petition because, the order passed by the Tribunal is per se illegal and vitiated due to violation of the rules of natural justice.

In our opinion, there is no merit in the argument of the learned counsel. It is neither the pleaded case of the petitioner nor any evidence has been produced before the Court to show that the Tribunal had passed the impugned order without issuing notice to the petitioner. Therefore, the argument regarding breach of the rules of natural justice cannot, per se, be accepted as correct. In any case, there is no extra-ordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner.

With the above observation, the writ petition is dismissed leaving the petitioner free to avail the statutory alternative remedy of appeal.

As a sequel to dismissal of the writ petition, W.P.M.P.No.4638 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 26, 2007
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